

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

FRANCIS SCHAEFFER COX,

Plaintiff,

v.

BENBELLA BOOKS, INC., at al

Defendants.

Case No: 3:18-cv-3367-B

**PLAINTIFF’S MOTION FOR VOLUNTARY DISMISSAL PURSUANT TO FEDERAL
RULES OF CIVIL PROCEDURE RULE 41(a)(2)**

Plaintiff Francis Schaeffer Cox (“Cox”) hereby moves this Court for an order granting voluntary dismissal, without prejudice, of this entire action, with each party to bear its own attorneys fees and costs.

At the time that Cox filed this Complaint on December 20, 2018, Cox believed in good faith that the subject publication, *The Blood of Patriots: How I Took Down An Anti-Government Militia with Beer, Bounty Hunting, and Badassery* (the “Book”), was published at the end of 2017, which would have put Cox within the 1-year statute of limitations for libel under Texas law. Indeed, the Book itself lists only the year 2017 generally as the copyright date. *See* ECF No. 11 at 9 (Def’s App. 7). The complaint also contains other counts for Intentional Infliction of Emotional Distress and Misappropriation of Name and Likeness, which statute of limitations are 2 years in Texas and thus was timely in any event. However, with the information set forth in Defendants’ Motion to Dismiss and Appendix in mind, specifically the Copyright Registration from the U.S. Copyright Office listing a publication date of September 19, 2017, ECF No. 11 at 291 (Def’s App. 289), Cox has decided to voluntarily dismiss this case. However, still, without discovery it remains unclear when the book was indeed actually published and put in commerce.

This matter is still in its initial stage. Counsel for Plaintiff, out of professional courtesy and in good faith, informed counsel for Defendants on March 6, 2019 that Cox would be voluntarily dismissing the Complaint and asked for consent. Exhibit 1. Counsel for Defendants “cleverly” then rushed to file an Answer to Plaintiff’s Complaint – in order to force Cox to make this motion instead of simply filing a notice – before even providing a response to counsel for Plaintiff that they do not consent. Exhibit 1. However, it is clear that the parties are in the same substantial position as they were on March 6, 2019. As such, Plaintiff Schaeffer Cox respectfully requests that this Court grant Cox’ motion to voluntarily dismiss, with each party to bear its own fees and costs, as it would have under Fed. R. Civ. P. 41(a)(1).

Dated: March 11, 2019

Respectfully submitted,

/s/ Larry Klayman
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically and served through the court’s ECF system to all counsel of record or parties on March 8, 2019

/s/ Larry Klayman